

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

LOIS S. RYAN,

Civil Case No. 08-6398-HU

Plaintiff,

O R D E R

v.

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

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KING, Judge:

The Honorable Dennis J. Hubel, United States Magistrate Judge, filed Findings and Recommendation on March 29, 2010. Plaintiff filed timely objections to the Findings and Recommendation.

When either party objects to any portion of a magistrate's Findings and Recommendation concerning a dispositive motion or prisoner petition, the district court must make a de novo determination of that portion of the magistrate's report. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); McDonnell Douglas Corp. v. Commodore Business Machines, Inc., 656 F.2d 1309, 1313 (9th Cir. 1981), cert. denied, 455 U.S. 920 (1982). This court has, therefore, given de novo review of the rulings of Magistrate Judge Hubel.

Ryan takes issue with Magistrate Judge Hubel's and the ALJ's failure to address her impaired processing speed. Ryan suggests that if the ALJ had considered this impairment, she would have been deemed disabled by at least November of 2004, rather than, as determined by the ALJ, May of 2006. However, the ALJ relied on Dr. Hennings' unchallenged opinion concluding that Ryan experienced only mild difficulties in maintaining concentration, persistence and pace. As a result, the ALJ's residual functional capacity assessment was supported by substantial evidence in the record.

Additionally, Magistrate Judge Hubel correctly affirmed the ALJ's conclusion regarding Ryan's finger numbness. Ryan's reports to Dr. Bost regarding the numbness in her fingers were unconfirmed by any testing. The ALJ's residual functional capacity assessment was supported by substantial evidence in the record.

Finally, Magistrate Judge Hubel's conclusions regarding Ryan's need to nap¹ and her failure to follow treatment are supported by the evidence and the law. See SSR 96-7p; Bray v. Barnhart, 554 F.3d 1219, 1227 (9th Cir. 2009).

This court ADOPTS the Findings and Recommendation of Magistrate Judge Hubel (#16) dated March 29, 2010 in its entirety, as modified by the analysis set forth above.

IT IS HEREBY ORDERED that the Commissioner's decision is AFFIRMED.

DATED this 6th day of May, 2010.

/s/ Garr M. King

GARR M. KING

United States District Judge

¹In addition to Magistrate Judge Hubel's analysis, I note the ALJ commented that although Ryan reported sleep difficulties, she also woke with her husband at 2:30 a.m. to ride along with him while he delivered papers. She also reported that it takes one to two hours to fall asleep due to pain, but for some inexplicable reason pain does not stop her from napping during the day. Tr. 18. These are additional reasons to affirm the ALJ's credibility analysis.